

No 8.

excludes his nearest of kin.—It was *answered*, That the annat being a favour to the successors of beneficed persons, though it need no confirmation, yet it must belong to the nearest of kin, as well as to the wife, which is cleared by the late act of Parliament 1669, anent annats, declaring them to belong to executors without confirmation; therefore the executors can only be accountable to the wife for the half, when there are no children.

Which the LORDS found relevant.

Fol. Dic. v. 1. p. 36. Stair, v. 2. p. 678.

1665. July 6.

MR JOHN COLVILL Advocate, *against* The LORD BALMERINO.

No 9.
There being
no wife or
children, the
annat belongs
to the nearest
in kin.

MR JOHN COLVILL advocate, as executor to umquhile Mr John Colvill, minister at Kirknewton, pursues the Lord Balmerino and others, for payment to him, as executor foresaid, of the stipend due to the said umquhile Mr John, for certain years bygone, alleged resting owing, Mr John having died in February 1663.—It was *excepted*, No process for that year's stipend, because it was paid to the in-trant minister, and was presented and admitted to the said kirk for the crop 1663; and the last incumbent having died before the term of payment, nothing could belong to the defunct, but what was *in bonis defuncti*.—It was *replied*, The executor pursued for the same, albeit the term was not come, as annat.—To which *duplicated*, That the executor could not crave the annat, the same being truly due to wife and bairns; *ita est* the defunct Mr John Colvill had neither.—THE LORDS found, That the nearest of kin have right to the annat, albeit the defunct have neither wife nor bairns. And there being a question as to the glebe, the defunct having died in February, to whom the crop thereon should belong; the LORDS found likewise, That the nearest of kin had right thereto, they always proving that the defunct had sown the same before his decease. (*See* No 5. the same case.)

Fol. Dic. v. 1. p. 36. Newbyth, MS. p. 32.

1709. February 8.

REPRESENTATIVES of Sheils *against* The TOWN of ST ANDREWS.

No 10.
All stipendi-
ary ministers
are compre-
hended under
the act of
Parliament,
whether they
be paid out of
tithes or
otherwise.

JOHN SHEILS, brother and executor to Mr Alexander Sheils, minister at St Andrews, who died in our colony of Darien, in 1700, pursues the Earl of Crawford, as provost, and the other magistrates of that town, for payment of the annat due for the half year after his incumbency, by the act of Parliament 1672, regulating the periods of its falling due.—*Alleged*, This gratuity introduced by law in favours of ministers, relicts, and children, left commonly poor, has only place where the stipend is payable out of the teinds, but in burghs royal, they